

ESTTA Tracking number: **ESTTA379099**

Filing date: **11/17/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Piaggio & C. SPA
Granted to Date of previous extension	12/01/2010
Address	Viale Rinaldo Piaggio, 25 Pontedera (PI), I-56025 ITALY
Correspondence information	MARK LEBOW APPLICANT'S ATTORNEY YOUNG & THOMPSON 209 MADISON ST. SUITE 500 Alexandria, VA 22314 UNITED STATES trademarks@young-thompson.com Phone:703-521-2297

Applicant Information

Application No	77537848	Publication date	08/03/2010
Opposition Filing Date	11/17/2010	Opposition Period Ends	12/01/2010
Applicant	Jeffrey Scott Fellman 5444 Cape Leyte Dr. Sarasota, FL 34242 UNITED STATES		

Goods/Services Affected by Opposition

Class 012. All goods and services in the class are opposed, namely: Motorcycles
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Grounds for Opposition

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	No bona fide intent under Section 1(b) and Abandonment

Attachments	2010-11-17 Notice of Opposition.pdf (9 pages)(63771 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/ml/
Name	MARK LEBOW
Date	11/17/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

PIAGGIO & C. SPA,

Opposer,

v.

JEFFREY SCOTT FELLMAN,

Applicant.

Opposition No.

Serial No. 77537848

NOTICE OF OPPOSITION

Opposer, PIAGGIO & C. SPA, is an Italian corporation with offices located at Viale Rinaldo Piaggio, 25 I-56025, Pontedera (PI) Italy.

Applicant, JEFFREY SCOTT FELLMAN, is an individual and U.S. citizen with an address located at 5444 Cape Leyte Drive, Sarasota, Florida 34242.

Opposer believes that it will be damaged by registration of the mark CIAOBELLA as depicted in U.S. Application Serial No. 77537848 for goods described in International Class 12 and hereby opposes registration of the same.

The grounds for opposition are as follows:

I. NO BONA FIDE INTENT

1. Opposer owns the mark CIAO as depicted in International Registration No. 437942, which is extended to numerous countries, including the U.S. via Application Serial No. 79077739 for "scooters; motorcycles; mopeds; motor bicycles; bicycles; three and four wheeled motor vehicles with flat or van bodies; automobiles; small trucks; vans; motor car bodies; truck bodies; frames and chassis for motor cars, trucks, motorcycles and bicycles; suspension systems for scooters, motorcycles, mopeds, motor bicycles, bicycles, three and four wheeled motor vehicles with flat or van bodies, automobiles, small trucks, vans; vehicle parts, namely shock absorbers, brakes, steering mechanisms; seats for motor cars and trucks; directional signals for vehicles; saddles for bicycles and motorcycles; and anti-theft alarms for vehicles" in International Class 12 ("Opposer's Application").
2. Opposer has used this mark around the world in various countries and has a bona fide intent to use the mark in commerce in connection with the goods described in Paragraph 1 above.

3. On February 10, 2010, the Examining Attorney assigned to Opposer's Application cited prior pending Application Serial No. 77537848 ("the '848 Application") as a potential basis for refusing Applicant's registration based on Section 2(d) of the Trademark Act.
4. Applicant filed the '848 Application on August 4, 2008 seeking to register the mark "CIAOBELLA" as a trademark for use in connection with "motorcycles" in Class 12.
5. Upon information and belief, Applicant did not have a *bona fide* intent to use the mark "CIAOBELLA" in connection with the goods described in the '848 Application at the time the application was filed.
6. Upon information and belief, Applicant did not have a *bona fide* intent to use the mark "CIAOBELLA" in commerce in connection with the goods described in the '848 Application at the time the application was filed.
7. Based on the foregoing, the '848 Application should be deemed void *ab initio* under Trademark Act Section 1(b), 15 U.S.C. §1051(b).

II. ABANDONMENT

8. Applicant repeats and realleges the allegations in paragraphs 1 - 7 above.
9. Upon information and belief, Applicant has not used the mark "CIAOBELLA" on or in connection with the goods described in Application Serial No. 77537848.
10. Upon information and belief, Applicant has not used the mark "CIAOBELLA" in commerce on or in connection with the goods described in Application Serial No. 77537848.
11. Upon information and belief, Applicant has abandoned any previous *bona fide* intent to use the mark "CIAOBELLA" on or in connection with the goods described in Application Serial No. 77537848.

III. FRAUD

12. On August 4, 2008, Applicant filed the '848 Application using the U.S. Patent and Trademark Office's ("USPTO") electronic online TEAS Plus system.
13. When filing the '848 Application, Applicant provided the USPTO with email of pmotion@acun.com ("Applicant's authorized email address") as a method of contact and specifically authorized the USPTO to contact him via this email.

14. On November 24, 2008, the examining attorney assigned to the '848 Application issued an office action requiring Applicant's response within six months or by May 24, 2009, and this office action was sent by email to Applicant's authorized email address.
15. Applicant failed to respond to the office action of November 24, 2008.
16. On July 6, 2009, the USPTO issued a Notice of Abandonment for the '848 Application following Applicant's failure to respond to the office action of November 24, 2008, which was also sent to Applicant's authorized email address.
17. On July 30, 2009, Applicant filed a petition to revive the '848 Application claiming that his failure to respond to the office action of November 24, 2008 was "unintentional" because he did not receive the office action prior to the expiration of the six-month response period.
18. Upon information and belief, Applicant's failure to respond to the office action of November 24, 2008 was intentional.
19. Upon information and belief, Applicant did in fact receive the office action of November 24, 2008 before the expiration of the six-month response period but

fraudulently asserted otherwise in his petition in order to have the USPTO revive the application.

20. On July 30, 2009 following Applicant's filing of the petition to revive, Applicant's petition to revive was granted.
21. On August 25, 2009, the examining attorney assigned to the '848 Application reissued the same office action, again requiring Applicant's response within six months or by February 24, 2010, and this office action was again sent by email to Applicant's authorized email address.
22. Applicant failed to respond to the office action of August 25, 2009.
23. On April 5, 2010, the USPTO issued a second Notice of Abandonment for the '848 Application following Applicant's failure to respond to the office action of August 25, 2009, which again was sent to Applicant's authorized email address.
24. On April 26, 2010, Applicant filed a second petition to revive the '848 Application, again claiming that his failure to respond to the office action of August 25, 2009 was "unintentional" because he again did not receive the office action prior to the expiration of the six-month response period.

25. Upon information and belief, Applicant's failure to respond to the office action of August 25, 2009 was intentional.
26. Upon information and belief, Applicant did in fact receive the office action of August 25, 2009 before the expiration of the six-month response period but fraudulently asserted otherwise in his petition in order to have the USPTO revive the application.
27. On April 26, 2010 following Applicant's filing of the second petition to revive, Applicant's second petition to revive was granted.
28. Whether applicant intentionally or did not intentionally respond to the office action was material to the USPTO's decision on whether to grant the first and second petitions to revive the '848 Application.
29. In the office actions that were issued for the '848 Application, Applicant was required to provide an English translation of the wording "CIAOBELLA."
30. In his response, which was finally made on June 15, 2010, Applicant told the Examining Attorney that the wording in the mark had no meaning in a foreign language.

31. Upon information and belief, the wording in Applicant's mark does have meaning in a foreign language and Applicant, knowing this at the time he filed his response, intended to deceive the USPTO into approving the application for publication by intentionally providing this false information.
32. Whether or not foreign wording in an application has a translation or meaning in English was material to the USPTO's decision on whether to grant the petition to revive the '848 Application.
33. Based on the foregoing, Applicant has committed fraud on the USPTO in order to induce it to register the mark in the '848 Application.

WHEREFORE, Opposer prays that Application Serial No. 77537848 be rejected, that no registration be issued therefor to Applicant, and that registration of the mark CIAOBELLA for the goods specified therein be denied and refused.

Respectfully submitted,

/Mark Lebow/
Mark Lebow
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Young & Thompson
209 Madison St., Suite 500
Alexandria, VA 22314
Tel: (703) 521-2297

November 17, 2010

CERTIFICATE OF SERVICE

I hereby certify the foregoing Notice of Opposition was served by U.S. mail, postage prepaid, to Jeffrey Scott Fellman, 5444 Cape Leyte Drive, Sarasota, Florida 34242 this 17th day of November 2010.

/Hue Morrison/
Hue Morrison